**Danielle Sportswear, Inc.** *and* **Upper South Department, International Ladies' Garment Workers' Union, Local No. 4, AFL-CIO.** Case 5-CA-13715

May 28, 1982

## DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

Upon a charge filed on September 15, 1981, by Upper South Department, International Ladies' Garment Workers' Union, Local No. 4, AFL-CIO, and duly served on Respondent, Danielle Sportswear, Inc., the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 5, issued a complaint and notice of hearing on October 27, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that commencing on or about July 13, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to execute the collective-bargaining agreement reached with the Union in June 1981, although the Union requested it to do so on July 13, 1981, and has continued to request it to do so. Respondent failed to file a timely answer to the complaint.

On February 5, 1982, counsel for the General Counsel filed directly with the Board a motion to transfer the case to and continue the proceeding before the Board and a Motion for Summary Judgment. Subsequently, on February 12, 1982, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause and, therefore, the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

### Ruling on the Motion for Summary Judgment

Rule 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent herein specifically states that unless an answer to the complaint is filed within 10 days of service thereof "all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." As noted above, Respondent has failed to file a timely answer to the complaint and has further failed to file a response to the Notice To Show Cause. According to the Motion for Summary Judgment, on January 18, 1982, the General Counsel mailed a letter to Respondent giving it until January 25, 1982, to file an answer, and stating that failure to do so would result in filing of a Motion for Summary Judgment. On January 28, 1982, the Regional Office informed Respondent by telephone and by letter that no answer had been received, and that the instant motion would be filed if an answer was not received by February 3, 1982. No timely answer has been filed.[1]

[1] Respondent's only response to the complaint is one letter to the Regional Office dated February 8, 1982. In the letter Respondent contends that, because it did not ship or purchase goods out-of-town, it is not subject to our jurisdiction. Insofar as this letter purports to be an answer to the complaint, we find it is inadequate and does not comply with the requirements of Sec. 102.20 of the Board's Rules and Regulations in that it does not specifically admit, deny, or explain each of the allegations of the complaint.

Even assuming, *arguendo*, that Respondent's letter constitutes a proper answer, it admits sufficient facts to establish jurisdiction, because it merely denies that it shipped goods out-of-state or purchased goods from out-of-state enterprises valued in excess of $50,000. In its letter Respondent does not deny the allegations of the complaint that during the past 12 months it derived gross revenues in excess of $500,000, that it sold and shipped from its Baltimore, Maryland, facility products, goods, and materials valued in excess of $50,000 directly to other enterprises located within the State of Maryland, which in turn shipped said products, goods, and materials to points outside the State of Maryland, or that it received at its Baltimore, Maryland, facility products, goods, and materials valued in excess of $50,000 from other enterprises located within the State of Maryland, each of which other enterprises had received the said products, goods, and materials directly from points outside the State of Maryland.

Accordingly, under the rule set forth above, no good cause having been shown for the failure to file a timely answer, the allegations of the complaint are deemed admitted and are found to be true, and we shall grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF RESPONDENT

Danielle Sportswear, Inc., maintains its office and place of business in Baltimore, Maryland, where it is engaged in the manufacture and sale of women's sportswear. During the past 12 months, a representative period, Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $500,000. During that same period Respondent sold and shipped from its Baltimore, Maryland, facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of Maryland or directly to other enterprises located within the State of Maryland, which in turn shipped said products, goods, and materials to points outside the State of Maryland. During that same period Respondent has purchased and received at its Baltimore, Maryland, facility products, goods, and materials valued in excess of $50,000 directly from points located outside the State of Maryland or from other enterprises located within the State of Maryland, each of which enterprises had received the products, goods, and materials directly from other points outside the State of Maryland.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

Upper South Department, International Ladies' Garment Workers' Union, Local No. 4, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### Respondent's Refusal To Bargain

Commencing on or about July 13, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to execute the collective-bargaining agreement reached during negotiations between the parties hereto culminating in June 1981, although the Union has requested and is requesting it to do so.

Accordingly, we find that Respondent has, since July 13, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has failed and refused to sign the collective-bargaining agreement reached with the Union in June 1981, we shall order that, upon request, Respondent sign said collective-bargaining agreement forthwith. In addition, we shall order that Respondent give effect to the terms of said agreement retroactive to its effective date, and make the unit employees whole for any loss of pay or benefits they may have suffered by reason of its failure to execute and sign the aforesaid agreement, with interest thereon to be computed in the manner prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977).

## CONCLUSIONS OF LAW

1. Danielle Sportswear, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Upper South Department, International Ladies' Garment Workers' Union, Local No. 4, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. All non-supervisory production, maintenance, packing and shipping employees employed by the Employer at its Baltimore, Maryland, facility, constitute a unit appropriate for the purpose of collec-

tive bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the above-named labor organization has been and now is the exclusive representative of all employees in the aforesaid unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 13, 1981, and at all times thereafter, to sign the collective-bargaining agreement reached with the Union in June 1981, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Danielle Sportswear, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to sign the collective-bargaining agreement reached with Upper South Department, International Ladies' Garment Workers' Union, Local No. 4, AFL-CIO, in June 1981, covering rates of pay, wages, hours, and other terms and conditions of employment for employees in the following appropriate unit:

> All non-supervisory production, maintenance, shipping and packing employees employed by the Employer at its Baltimore, Maryland facility.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and execute the collective-bargaining agreement reached with the Union in June 1981.

(b) Give effect to the terms of the above-described collective-bargaining agreement retroactive to the effective date of such agreement, and make the unit employees whole for any loss of pay or benefits they may have suffered by reason of its failure to execute and sign said agreement, with interest thereon to be computed in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its place of business in Baltimore, Maryland, copies of the attached notice marked "Appendix."[2] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

WE WILL NOT refuse to sign the collective-bargaining agreement reached with Upper South Department, International Ladies' Garment Workers' Union, Local No. 4, AFL-CIO, in June 1981, covering rates of pay, wages, hours, and other terms and conditions of employment for employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and execute the collective-bargaining agreement reached with the above-named Union in June 1981.

WE WILL give effect to the terms of the above-described collective-bargaining agreement retroactive to the effective date of such agreement, and make the unit employees whole for any loss of pay or benefits they may have suffered by reason of our failure to execute and sign said agreement, together with interest. The bargaining unit is:

All non-supervisory production, maintenance, packing and shipping employees employed by the Employer at its Baltimore, Maryland location.

DANIELLE SPORTSWEAR, INC.